

MALABAR TOWN COUNCIL REGULAR MEETING

November 5, 2012 7:30 PM

This meeting of the Malabar Town Council was held at Town Hall at 2725 Malabar Road.

A. CALL TO ORDER:

The meeting was called to order at 7:30 pm by Interim Mayor/Chair Phil Crews. The prayer and pledge were led by Council Member District 5 Marisa Acquaviva.

B. ROLL CALL:

MAYOR/CHAIR

PHILLIP CREWS

VICE-CHAIR:

MARISA ACQUAVIVA

COUNCIL MEMBERS:

CARL BEATTY

DAVID WHITE

STEVE RIVET

JEFF MCKNIGHT

TOWN ADMINISTRATOR:

BONILYN WILBANKS

TOWN ATTORNEY:

KARL BOHNE, Excused

TOWN CLERK/TREASURER:

DEBBY FRANKLIN

Franklin said for the record, Town's PW Dir Tom Miliore and Fire Chief Robert Strandell are also present.

C. ADDITIONS/DELETIONS/CHANGES: Clerk asked to add two items: Sheila Eschenberg at Public section and under Action, Misc item #7 to approve an additional expense for the Security Camera DVR Replacements at Park and Fire Dept. Without objection the Chair added them to agenda.

D. **CONSENT AGENDA: To Be Approved as a Group with one Roll Call Vote on All Items if Resolution is included, otherwise a voice vote.**

(Any Council Member may request an item on the Consent Agenda to be removed and placed on regular agenda immediately after new business to be discussed and voted on separately by the Town Council).

1a. **Approval of Minutes**

Regular Town Council Meeting – 10/15/2012

Exhibit:

Agenda Report No. 1a.

1b. **Budget Adjustment – Reso 33-2012**

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO A BUDGET ADJUSTMENT IN THE FISCAL YEAR 2011-2012; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Exhibit:

Agenda Report No. 1b.

1c. **Acknowledge Receipt of September Financials**

Chair directs Clerk to read Resolution by title only.

MOTION: McKnight / Beatty to approve the consent agenda.

ROLL CALL VOTE: 1)Beatty, Aye; White, Aye; Rivet, Aye; McKnight, Aye; Acquaviva, Aye. Motion carried 5 to 0.

E. **PUBLIC COMMENTS:** General Items not related to agenda items; **Speaker Card Required**

Sheila Eschenberg read statement in memory of Tom Eschenberg. Send to Attorney Bohne, copy to Fire Dept and Teen Council. (Attached to minutes)

Jim Milucky, 1280 Highway 1, he was not aware that there was any restriction on public comments so he prepared something earlier today so if he steps over the line, he didn't mean any ill intent and he is sure you'll stop me if you feel that I've gone a place where I shouldn't have. Mr. Mayor, Members of the Council, residents of Malabar, thank you for allowing me to speak in this public venue. I asked to speak here tonight because there are those in Malabar who would choose to mis-lead and mis-represent facts and issues for their own personal gain. I wrote responses to some issues posted on a website proposing to represent those of us in Malabar. This is not the case and, in my opinion, may come close

to defamation. According to Wikipedia, he read the definition from Wikipedia, is the communication of a statement that makes a claim expressly stated or implied to be factual that may give an individual, business product, group, government, religion or nation a negative or inferred image. This can also be any disparaging statement made by one person about another which is communicated or published. In common law, it is usually a requirement that this claim is false and that the publication is communicated to someone other than the person defamed. My response sent to the website was never posted; so after many days, I emailed the contact section of the website to discuss how I could post my response and I still got no response. Finally, I phoned one of the candidates in this election that posts on that forum so I could respond directly and my call was not taken; I left a voice mail and still no response. It is this type of behind the scenes sniping that often discourages good citizens from coming forward with the intent of serving their community. One of the posters writes who the heck is Jim Milucky; claims to have never seen me at a Council meeting and tells everyone who they think my friends are. Rubbish. I have attended many Council meetings over the last ten years and I checked old Town minutes and can confirm addressing Council as far back as 2006 and again in 2009 regarding the budget that I personally reviewed and I think I complimented Tom on one heck of a good job as well as staff. Allegations have surfaced regarding business relations that I may have with other candidates. These allegations are patently misleading, factually incorrect and I can only assume that they are intended to harm my business and defame my character. There is no substance to these claims and I will only state the following: I have no undisclosed business interests. All candidates are required to submit the financial disclosure form. The veiled allegations on the website are exactly that. Regarding being a registered agent; a registered agent receives document service, nothing more. An agent provides a legal business address for companies that either do not have or want services at their home or business. I provide this service, at no charge for some 67 businesses; one of which is Mr. Rivet's company. I have no other disclosures to make regarding financial interests because none exist. Taxes; I prepare or have prepared taxes for a number of town residents and town employees over the years. IRS circular 230 discourages disclosure of taxpayer information and I do not disclose my clients without their consent. I have no conflict of interest at the present time. My wife is an alternate on P&Z and should a conflict arise, either she or I will abstain as is done in the past. There are plenty of things to be worried about that already exist without worrying about things that do not yet exist. You may stop me at this one but we'll see how far you let me go. My unique training and experience, I would think, should be desired by the residents of Malabar at times when budgeting accountability and transparency are desired.

Chair gaveled an interruption and asked Council if they had problem with this statement, keeping in mind the election tomorrow. Most did not know what the issue was. White asked what seat he was running for. He is running for District 1 and has no problems with the other candidate for this seat.

Milucky hopes that the future Malabar Council will take a firm stance discouraging petty behavior while encouraging those that desire to be active in our community to come forward in a positive way.

Leanne Milucky from audience said there are signs in area that this website is the one stop place for info on election and the website does appear to be coming from the Town of Malabar and uses pictures of the colors on the front page.

Milucky said in closing, I would like to thank my neighbor and friend, Hans Kemmler, for years of service in Malabar and running a good campaign.

Acquaviva said she has actually brought this up at Town meetings because I've had phone calls about this website. I brought it up before and it's actually not a website linked to the Town of Malabar and it is confusing because I've had people ask me what this is; I went on it and there is no admins with people's names on it so I tell people that there is the right to free speech and that is not, anywhere, linked to our Town's website,

Steve Morris, Weber Road, no longer present. Move on.

F. **ATTORNEY REPORT:** Excused

G. **BREVARD CTY SHERIFF:** none

H. **PUBLIC HEARINGS:** 0.

I. **PUBLIC: ITEMS DIRECTLY RELATED TO RESIDENTS AND RECOMMENDATIONS FROM TOWN BOARDS/COMMITTEES PRESENT AT MEETING**

2. **Recommendation from Town Engineer re: Micro Surfacing of Existing Cold Paved Roads**

Exhibit: Agenda Report No. 2

Recommendation: Request Action

MOTION: McKnight / Beatty to take from table. **Vote:** All Ayes.

Chair stated Council had already spoken about this and wanted info from Town Engineer. McKnight said it was over our budget. It is 57K. TA said we had 40K in budget. McKnight would be in favor of it if staying under the 40K. Rivet said this is preventing a higher future expense. White questioned why they don't want to go by the Engineer's recommendation.

Beatty said if you do it before the ravelly then you extend the life of the road. Some of them like Atz require more material. Beatty said we should do the ones that are the worst – west Atz. Once you break through. Acquaviva said aren't we piggy backing on a contract to get better pricing. TA said yes, in the process of copying the contract. Then she heard of potential problem about the piggy backing. Then Karl Bohne responded and said we could piggy back.

TA said she can ask for him to do the worst road and ask him to juggle the other to stay under the 40K. Mayor asked if we can piggy back again in future. TA said yes, that this contract is for three years. Do the bad ones. Beatty said there is also a mobilization factor. So we know what the real numbers are.

Chair said is there consensus to go get more information. Rivet said he would want to know what the cost would be. Mayor said we can add to that remaining 13K. Rivet said he would not want to not spend 13K now and then have to pay 25K next year. Beatty said some of the roads were paved when it was raining. TA asked if we are bringing this back to next meeting.

Schedule for next meeting.

McKnight said he asked before regarding having the County take over maintenance of Corey and Weber. TA has sent email to the County PW Director and she has gotten read receipts but no response. She will follow up.

J. **ACTION ITEMS:**

ORDINANCES: First reading – 1

3. **Amend Article V, Section 1-5.27 re: Water Bodies (Ord 2012-60)**

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING ARTICLE V OF THE LAND DEVELOPMENT CODE OF THE TOWN; AMENDING SECTION 1-5.27 RELATING TO PONDS; CREATING STANDARDS FOR DECORATIVE WATER FEATURES AND PONDS; PROVIDING FOR DEFINITIONS; PROVIDING FOR PERMITS FOR DECORATIVE WATER FEATURES AND PONDS; PROVIDING FOR DESIGN CONSIDERATIONS FOR DECORATIVE WATER FEATURES OR PONDS; PROVIDING FOR A REVIEW PROCESS AND PERFORMANCE STANDARDS; PROVIDING FOR THE COMPLETION OF DECORATIVE WATER FEATURES AND PONDS; PROVIDING FOR STANDARDS FOR FILL ACTIVITIES;

PROVIDING FOR PENALTIES AND AN APPEAL PROCESS; PROVIDING FOR REPEAL, SEVERABILITY, INCORPORATION INTO THE CODE OF ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

Exhibit: Agenda Report No. 3

Recommendation: Request Action

Chair directs Clerk to read Ordinance by title only.

MOTION: Rivet / Beatty to approve the first reading of Ord 2012-60. Change the word to "MAY"

ROLL CALL VOTE: Beatty, Aye; 1)White, Aye; Rivet, Aye; McKnight, Aye; Acquaviva, Aye. Motion carried 5 to 0.

RESOLUTIONS: 0

MISCELLANEOUS:

4. Approve Street Light on Babcock St. for Brevard Worship Center

Exhibit: Agenda Report No. 4

Recommendation: Request Action

MOTION: Rivet / White to approve it.

Discussion:

Rivet said the new lights have to be shielded. Mayor asked if our other lights comply. Rivet said if we have a lighting ordinance; requests must be compliant.

McKnight is against it all together. They can put light on their own property. Acquaviva said they are not trying to do something for nothing. Acquaviva said the only way to get light there is through the Town. It is our jurisdiction. McKnight said if we allow this we need to approve all requests. Beatty said when Harris came in they wanted them and the thought was other industries would move in and share cost.

Mayor we are lighting a public street for safety or anti-crime. Acquaviva said you have to take this case by case.

ROLL CALL VOTE: Beatty, Nay; White, Aye; 1)Rivet, Aye; McKnight, Nay; Acquaviva, Aye. Motion carried 3 to 2.

5. LT-ST Disability Language Revised in Employee Manual

Exhibit: Agenda Report No. 5

Recommendation: Request Action

Discussion: TA tie ability to work with LT and ST. She went to HR seminar and had opportunity to talk to him. Don't play Dr as part of your employee policy. It would be handled by the HR coordinator. Marisa asked if it had been reviewed by Atty. TA said it was the labor attorney that discussed this with her.

MOTION: McKnight / Beatty to approve.

VOTE: All Ayes.

6. Accept Donation of Two Concrete Poles for Lighting the Basketball Court

Exhibit: Agenda Report No. 6

Recommendation: Request Action

Discussion: Beatty said just because we are accepting the donation. May be a good gesture.

David White initiated this as he is coaching basketball and with the time change, he is not lighting the park. They are out of there at 6:45. It was a suggestion by one of the parents of the kids. He knew there would be discussion about it due to the lighting ordinance.

McKnight said it was very generous offer but it should come through Park Board. White said he is right. McKnight said there was the batting cage donation that didn't go to Park Board. White said the whole donation idea came up very suddenly over a conversation when the time changed. McKnight thinks it is great. White is not trying to avoid any steps.

Dick Korn thinks Park Board would be delighted with this offer. They got offer for other new lighting and they didn't want their old stuff. Need to look at cost. Where is it going to hook up. This should have

come to the Board a few months ago. He would suggest them to refer them to the Board. White said he is using a temp pole. He was asked if the offer would still stand in a few months. Park Board doesn't meet in November and Park Board can consider it in December and then come back to Council in December or January.

Beatty said instead of looking at this in a piece meal fashion, look at the whole park lighting issue. Acquaviva said you have to do some things on a case by case basis.

MOTION: Rivet / McKnight to send to Park Board.

VOTE: All Ayes. Dick Korn said to coordinate with Chair Maryann Marsh.

ADDED

7. Approve Security Camera DVR Replacements

Exhibit: Agenda Report No. 7

Recommendation: Request Action

Discussion: TA said this came about after a request to look at tapes. Also about graffiti. The security cameras were not working. We were working on the security system here and she sent contractor there to check out the systems. The DVRs were not working so there was no tapes to review.

TA said there is 3K in repair line item but she wanted to bring it to you because later in the year she may have to come back for you. Next budget year we will budget for the rest of the expense. We do need recording. He will work with cameras we have and replace as they fail. These would be for the DVRs at Fire Dept and Park Restroom. TA said this is money we didn't plan on spending during the budget prep.

Acquaviva said if we are not checking the ones that were first installed then what assurance do we have the replacement will work. TA said that once it is set up they will have someone assigned at the Fire Dept and at Town Hall that is trained to check on the equipment. TA will also be able to monitor remotely. TA will also set up a policy to have accountability. And she will initiate a log.

TA said she gave the other vendor every opportunity. Acquaviva asked how are they working. When they do need to go to it they learn that it wasn't recording.

Mayor said the DVRs are shot. He realized we do not have this in the budget and this new vendor is working with us. McKnight said this item was added late and he didn't have time to review. Also it seems like an open ended expense.

TA said she can have vendor at next meeting. White said he has to deal with this on some of his projects and it is a real but legitimate expense.

Mayor said technology has really improved. Gave example of camera at front door and you can view on your phone. With the recorders you can record all that.

Consensus of Council to have vendor come to future meeting.

McKnight said also for the DVD and CD recorder for Council meetings. Ask same vendor to talk to this.

K. PRESENTATIONS:

L. PROCLAMATION:

M. STAFF REPORTS:

ADMINISTRATOR: Regarding signage on lakes for Palm Bay they took language from Health Dept. She sent info to Atty Bohne. Atty said we should post, no swimming, no fishing, no wading,

McKnight said he was there last weekend and they were swimming in lake. Acquaviva thought he said once you put up one sign then you have liability. Thought he said better to put up no signage.

CLERK: Franklin made presentation to Mayor Crews for his service to the Town on behalf of Council and the residents. The special Town flag was made and framed for such a presentation. Franklin said that the Brevard Supervisor of Elections Office would not have their first unofficial results until Friday Nov 9, 2012. Franklin said the Malabar Special Meeting on Nov 8 will be to certify the Malabar election results and swear in new officials. This is a momentous event in our local government democracy and we have tried to give it more attention and significance. She encouraged all to attend and recognize their elected officials.

Regarding newsletter, the due date for the articles is Nov 7. I was incorrect in my email to Council over the weekend.

O: DISCUSSION ITEMS:

P. REPORTS - MAYOR AND COUNCIL MEMBERS:

-) Beatty:
-) White:
-) Rivet:
-) McKnight:
-) Acquaviva: She will be a poll watcher and will have her credentials from a national candidate.
-) Interim Mayor: Mayor's wife will be at election place with Sheila Eschenberg and will be giving out water. It has been delightful serving the community. Thanks for the recognition. Thanked the audience also.

Q. PUBLIC COMMENT: General Items related or not to agenda items (Speaker Card Required)

Brian Vail, Smith Lane, re: street light issue was before Council once before. Concern was the cost. He suggested a method of reimbursement by requestor. If we could get some kind of agreement and forecast the cost and have them pay once a year. Then if they don't pay the Town cancels the light. This may be a resolution. They pay for installation, disconnect and annual fee up front.

Mayor asked if he is suggesting changing the policy. Mayor said they may have problem with equal treatment. He thinks they missed that opportunity. Most cities do provide street lights. It would be unusual for cities to not provide street lights for public safety. It is not a safety issue and a benefit for that one person only. TA said FPL would put up a light on private property. Mayor said they got light up at park for public safety.

Mr. Vail said regarding the Malabar Matters website, if you don't sign it then it doesn't count.

R. ADJOURNMENT:

There being no further business to discuss, Chair stated that without objection the meeting was adjourned. The meeting adjourned at 8:55 PM

BY: Phillip R. Crews
Mayor Phillip R. Crews, Council Chair

ATTEST BY:

Debby K. Franklin
Debby K. Franklin, C.M.C. Town Clerk/Treasurer

Date Approved: 11/19/2012